



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173827

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 24, 2016, at Waupaca, Wisconsin.

The issue for determination is whether the Waupaca County Department of Social Services correctly determined that the Petitioner was overpaid \$557 in FoodShare benefits for the period of July 2014 through December 2014.

NOTE: The record was held open until June 2, 2016, to allow the agency to submit copies of the notices that it sent the Petitioner and to give Petitioner an opportunity to submit verification of her income. The agency submitted the following items:

- Exhibit 19: SSA Details print out from the CARES database
- Exhibit 20: "Overpayment Correspondence"
- Exhibit 21: FoodShare Overpayment Worksheet
- Exhibit 22: Fax from [REDACTED], CPA
- Exhibit 23: Fax to [REDACTED] dated 1/20/15
- Exhibit 24: 1/13/16 Fax between [REDACTED] and Outagamie Co-op
- Exhibit 25: 12/17/15 Fax between [REDACTED] and [REDACTED]
- Exhibit 26: E-mail from [REDACTED]
- Exhibit 27: FoodShare Overpayment Notice, Claim [REDACTED]
- Exhibit 28: BadgerCare Overpayment Notice, Claim [REDACTED]
- Exhibit 29: BadgerCare Overpayment Notice, Claim [REDACTED]

The Petitioner submitted her paystubs. The packet of paystubs has been marked as Exhibit 30 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Economic Support Worker
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waupaca County.
2. On March 29, 2016, the agency sent the Petitioner a FoodShare Overpayment Notice, Claim # [REDACTED], in the amount of \$557.00 for the period of July 1, 2014 through December 31, 2014. (Exhibit 27)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 20, 2016. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook*, (FSH) § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

However, whose error caused the overpayment does make a difference in terms of how far back the agency can recoup overpaid benefits.

The look back period for client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Six years, or
2. To the month the change would have been effective had the group timely reported it, whichever is most recent.

...

The look back period for non-client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:


1. Twelve months, or
2. To the month the error was effective had the change been acted on timely, whichever is most recent

7 C.F.R. § 273.18(b); FSH § 7.3.2.1

In the case at hand, the agency asserts that the Petitioner caused an overpayment of FoodShare benefits between July 1, 2014 and December 2014, because her household income increased and she failed to report it by the 10th of June 2014.

FSH§ 6.1.1.1 states that “Elderly, Blind or Disabled Food Units are those units where all food unit members are elderly, blind or disabled. If no one in this food unit has earned income, these food units are required to report the following changes within 10 days:

....2. Income:

- a. Unearned: New source- increases of more than \$100 per month in [child](#)  support income; increases of more than \$50 per month in other types of unearned income.
- b. Earned: Changes in the source of income (a new job must be reported within 10 days from the start of the job, not from when the recipient received the job.”

Only one person in Petitioner’s food unit is elderly, blind or disabled (EBD). Consequently, Petitioner is not subject to the EBD change reporting requirements of FSH§ 6.1.1.1.

As there is no evidence to indicate that Petitioner’s food unit was comprised entirely of elderly, blind or disabled members, she only needed to report changes in income that exceeded 130% of the FPL:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household’s which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.



...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

In May and June 2014, 130% of FPL for a household of four people was \$2,552 per month. *FoodShare Wisconsin Handbook §8.1.1.1, Release 13-02.*

The parties submitted the following documentation regarding Petitioner’s household income:

- Exhibit 19: An SSA Details screen showing SSDI income for Petitioner’s husband in the amount of \$1,567.90 per month.
- Exhibit 22: A Payroll Summary from  for the period of May 31, 2014 through November 6, 2015, and a Summary Report for November 7, 2015 to December 31, 2015.
- Exhibit 23: A paystub dated December 31, 2015 from .

- Exhibit 23: Paystubs for [REDACTED] from Outagamie co-op dated June 20, 2014 through May 22, 2015.
- Exhibit 25: An employment “verification” from [REDACTED] indicating the Petitioner’s employment there started in December 2014, and another copy of the December 31, 2015 paystub.
- Exhibit 26: A Work Number printout for [REDACTED] from a temp agency showing income paid between October 25, 2013 and January 10, 2014; and a Work Number print out for [REDACTED] from a department store showing income earned in July 2015; and a Work Number print out for [REDACTED] from a [REDACTED] temp agency showing income received from July 23, 2015 to November 6, 2015.
- Exhibit 30: Petitioner’s paystubs from [REDACTED] dated July 18, 2014 (pay period ending 6/29) through October 24, 2014; and paystubs from [REDACTED] for the months of July 2014 through October 2014.

It is asserted that the Petitioner received child support income, but the agency failed to provide documentation verifying that income.

Though testimony was taken from the privately contracted overpayment specialist concerning the income calculation, her testimony inadequately explained how the agency determined the Petitioner’s income from May 2014 through December 2014. This is particularly true, after having received the agency’s documents post-hearing. Looking at the above information and looking at the overpayment worksheets submitted by the agency, I am unable to reproduce the calculations made by the county agency and its contractor. Indeed, it is puzzling to me that the agency has produced two FoodShare overpayment worksheets, one in Exhibit 21 and one in Exhibit 27 that have totally different income calculations.

I note that looking at what the agency provided, it looks like its overpayment determination was flawed from the very beginning. Petitioner did not start working at the [REDACTED] until the end of May and did not receive her first paycheck until June 2014. (See Exhibit 22) The agency provided no income information from [REDACTED] for the period of May 2014 through December 2014, and based on what Petitioner testified to and the paystubs she provided, she didn’t start receiving income from [REDACTED] until July 2014. (Exhibit 30; Testimony of Petitioner), and Petitioner’s daughter did not receive any income until June 20, 2014, since she didn’t start working at the co-op until June 1, 2014. (See Exhibit 24)

Thus, Petitioner’s only household income in May 2014 came from her husband’s Social Security Income in the amount of \$1,567.90, which was reported to the agency already. As such, there was no change in income in May 2014 that would have triggered a need to report income by June 10, 2014. Because nothing needed to be reported by June 10, 2014, there was no resulting change in benefits and no overpayment for July 2014. So even, the agency’s determination of when the alleged overpayment began is flawed.

Based upon all of the foregoing, it is found that the agency has not met its burden to prove the Petitioner was overpaid \$557.00 in FoodShare benefits for the period of July 1, 2014 to December 21, 2014.

CONCLUSIONS OF LAW

The agency has not met its burden to prove the Petitioner was overpaid \$557.00 in FoodShare benefits for the period of July 1, 2014 to December 21, 2014.

THEREFORE, it is

ORDERED

That the agency rescind FoodShare overpayment claim # [REDACTED]. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

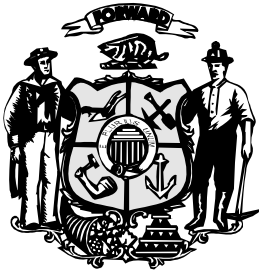
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of June, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 10, 2016.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability